

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 11
)
NILHAN DEVELOPERS, LLC,) CASE NUMBER: 15-58443-wlh
)
Debtor.)
)

DEBTOR'S AMENDED MOTION TO AUTHORIZE INTERIM AND FINAL
USE OF CASH COLLATERAL AND REQUEST FOR EXPEDITED
PRELIMINARY HEARING

COMES NOW Debtor Nilhan Developers, LLC, a Georgia limited liability company, and pursuant to the provisions of 11 U.S.C. § 363(c)(2) and Bankruptcy Rule 4001(b), moves this Court for interim and final orders permitting it to use the income collected from the operation of a retail shopping center and three office suite buildings located at 2800, 2810, 2812, and 2814 Spring Road SE, Atlanta, Cobb County, Georgia, which may be claimed as cash collateral by Wells Fargo Bank, NA, for the purposes of meeting current operating expenses, including, but not limited to: utilities, pest control, cleaning services, landscaping, elevator service, accounting services, repairs and maintenance expenses, insurance, taxes and similar expenses, and that the Court grant the Debtor an expedited preliminary hearing on this motion on the grounds that the Debtor requires the immediate use

of cash collateral in order to avoid immediate and irreparable harm to the estate pending a final hearing as contemplated by Bankr. R. 4001(b)(2).

1.

Debtor is the owner of a retail shopping center and three office suite buildings located at 2800, 2810, 2812, and 2814 Spring Road, Atlanta, Cobb County, Georgia ("Property"). The Property is occupied by tenants who pay rent and operating expenses of approximately \$59,000 per month pursuant to certain unexpired leases. This is the Debtor's primary source of income.

2.

Normal operating expenses of the Property include utilities, pest control, cleaning services, landscaping, elevator service, accounting services, repairs and maintenance expenses, insurance, taxes and other expenses incidental to maintaining the Property. A proposed budget covering May, June, July, and August 2015 is attached hereto as **Exhibit "A"**.

3.

Expenses are due and payable upon receipt of the merchandise or services, thereby making it essential that Debtor have access to funds to pay for these goods and services. Moreover, the Debtor must maintain and operate the Property in

accordance with the leases related to the Property in order to protect its primary source of income.

4.

The income derived from the Property may be claimed to be cash collateral by Wells Fargo Bank, NA (“WFB”), pursuant to a Deed to Secure Debt, Assignment of Rents, and Security Agreement dated August 15, 2008, executed by Debtor in favor of WFB, recorded at Deed Book 14632, Page 1590, of the Cobb County, Georgia records (as amended, modified, or restated, the “Deed”). The Deed secures certain obligations of Chittranjan Thakkar, Saloni C. Thakkar, Niloy, Inc., and Nilhan Financial, LLC, to WFB, which obligations were guaranteed by the Debtor.

5.

Consequently, the rents and other income to be used to pay the operating expenses as set forth in this application may be deemed to be cash collateral as contemplated by the provisions of 11 U.S.C. § 363.

6.

Section 363 of the Bankruptcy Code provides that cash collateral may be used upon Court order or consent of each entity having an interest in the cash collateral.

7.

Debtor shows this Court that if the income is cash collateral, it has not yet obtained the consent of Wells Fargo Bank, NA, which may claim an interest in cash collateral.

8.

Debtor shows this Court that it is necessary for it to make use of the income immediately to maintain the estate and that there is insufficient time for a full hearing to be held before Debtor must make use of such funds, see, 11 U.S.C. § 102, and that pursuant to Bank. R. 4001(b)(2), the Debtor is entitled to a preliminary hearing permitting it to use cash collateral pending a final hearing.

9.

Pursuant to the provisions of 11 U.S.C. § 363, Debtor hereby applies for an order determining that the income from its business is not cash collateral, or in the alternative, authorizing it to use cash collateral, and further requests that this Court grant its application at least on an interim basis after notice to interested parties as is appropriate under the circumstances of this case as contemplated by the provisions of 11 U.S.C. § 102, all in accordance with the proposed order attached hereto as **Exhibit “B”**.

WHEREFORE, Debtor moves this Court for an order authorizing the use of the income from the Property consistent with the form of the order attached hereto as Exhibit "B", to pay normal operating expenses of the Property as set forth on Exhibit "A", in order to continue to operate the Property for the use of its tenants on an emergency and interim basis pending a final hearing. Debtor further requests entry of a final order allowing the use of cash collateral to preserve the Property and its estate pending the confirmation of a Plan of Reorganization.

This 29th day of May, 2015.

/s/ John A. Christy

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Georgia Bar No. 291473

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Proposed Attorneys for Debtor

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EXHIBIT A

Nilhan Developers LLC - Emerson
 Budget for Bankruptcy Filing
 For the Period May 5, 2015 through August 31, 2015

	May Budget	Jun Budget	Jul Budget	Aug Budget	Total Budget
REVENUE:					
Rental Income	51,204.32	58,790.14	58,790.14	58,790.14	227,574.74
TOTAL REVENUE:	51,204.32	58,790.14	58,790.14	58,790.14	227,574.74
EXPENSES:					
Advertising	-	-	-	-	-
Bad Debt Expense	2,177.42	2,500.00	2,500.00	2,500.00	9,677.42
Bank Fees	87.10	100.00	100.00	100.00	387.10
Cleaning & Janitorial	4,267.74	4,900.00	4,900.00	4,900.00	18,967.74
Commission Expense	696.77	800.00	800.00	800.00	3,096.77
Dues & Subscriptions	-	-	-	-	-
Insurance	1,741.94	2,000.00	2,000.00	2,000.00	7,741.94
Licenses & Permits	261.29	300.00	300.00	300.00	1,161.29
Miscellaneous	261.29	300.00	300.00	300.00	1,161.29
Professional Fees	1,306.45	1,500.00	1,500.00	1,500.00	5,806.45
Rent expense	-	-	-	-	-
Repairs & Maintenance	4,877.42	5,600.00	5,600.00	5,600.00	21,677.42
Supplies	87.10	100.00	100.00	100.00	387.10
Security System & Monitoring	-	-	-	-	-
Taxes	4,964.52	5,700.00	5,700.00	5,700.00	22,064.52
Utilities	22,732.26	26,100.00	26,100.00	26,100.00	101,032.26
TOTAL EXPENSES:	43,461.29	49,900.00	49,900.00	49,900.00	193,161.29
NET OPERATING INCOME	7,743.03	8,890.14	8,890.14	8,890.14	34,413.45

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
NILHAN DEVELOPERS, LLC,)	CASE NUMBER: 15-58443-wlh
)	
Debtor.)	
)	

ORDER ALLOWING INTERIM USE OF CASH COLLATERAL BY
NILHAN DEVELOPERS, LLC

Nilhan Developers, LLC, a Georgia limited liability company (“Debtor”), having filed its Motion to Authorize Interim and Final Use of Cash Collateral and Request for Expedited Preliminary Hearing (the “Motion”), seeking authority to utilize the cash collateral that may be claimed by Wells Fargo Bank, NA (“WFB”) as secured creditor in this case and the Motion having come before the Court and based upon the representations contained in the Motion, the representations of

Debtor, and other matters before the Court, the Court hereby finds, decrees, and orders as follows:

1.

The Debtor will suffer immediate and irreparable harm if it is not permitted to use the rents generated by a retail shopping center and three office buildings located at 2800, 2810, 2812, and 2814 Spring Road SE, Atlanta, Cobb County, Georgia, (the “Cash Collateral”) on an interim basis pending a final hearing on the Motion.

2.

Pending the final hearing on the Motion, the Debtor shall be authorized to use the Cash Collateral to pay the expenses list on the attached **Exhibit “A”** to the Motion, a copy of which is also attached hereto. The Cash Collateral shall be held in a debtor-in-possession account at a bank insured by the Federal Deposit Insurance Corporation and which is not a creditor of Debtor.

3.

Debtor shall not be permitted or authorized to use Cash Collateral other than as expressly authorized by an order of this Court, or the written consent of WFB. The entry of this Order is without prejudice to the ability of WFB or the Debtor to present further evidence and argument at the final hearing on the Motion.

4.

Pursuant to Section 363(e) of the Bankruptcy Code, this Court conditionally authorizes Debtor to use Cash Collateral on a preliminary basis, in accordance with the terms of this Order. The Court shall hold a final hearing on the Debtor's motion at _____ o'clock _____.m. on the ____ day of _____, 2015 in Courtroom 1403, U.S. Courthouse, 75 Spring St., SW, Atlanta, Georgia 30303. If any or all of the provisions of this Order are hereafter modified, vacated or stayed by any Order of this Court or any other court, any Cash Collateral used by Debtor pursuant to this Order prior to the effective date of such modification, stay or vacation shall be governed in all respects by the provisions of this Order.

Prepared and presented by:

/s/ John A. Christy
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Georgia Bar No. 125518
J. Carole Thompson Hord
Georgia Bar No. 291473

Proposed Attorneys for Debtor

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DISTRIBUTION LIST

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the within and foregoing DEBTOR'S AMENDED MOTION TO AUTHORIZE INTERIM AND FINAL USE OF CASH COLLATERAL AND REQUEST FOR EXPEDITED PRELIMINARY HEARING via Federal Express or by placing a copy of the same in the United States Mail, with sufficient postage thereon to ensure delivery on the Master Service list attached hereto.

This 29th day of May, 2015.

/s/ J. Carole Thompson Hord
J. Carole Thompson Hord

MASTER SERVICE LIST

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Cobb County Water System
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